

1 Andrew M. Ellis
State Bar of Arizona no. 018326
2 ANDREW M. ELLIS LAW, PLLC
Post Office Box 16272
3 Phoenix, AZ 85011-6272
(602) 524-8911
4 Andrew.Ellis@azbar.org
5 *Attorney for Debtors*

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:

9 STEVE PANDI and
EILEEN A QUEZADA,

10 Debtors.

11 STEVE PANDI and EILEEN A. QUEZADA,

12 Movants,

13 v.

14 CLARK COUNTY TREASURER, JACK AND
15 PATRICIA KELLY, BUTLER LAW OFFICE,
16 and INTERNAL REVENUE SERVICE,

17 Respondents.

Chapter 11

Case no. 2:16-bk-11585-SHG

**EMERGENCY MOTION TO SELL
PROPERTY FREE AND CLEAR OF
LIENS AND FOR ORDER
POSTPONING TRUSTEE'S SALE**

Trustee's Sale Date: 11/30/2016

Trustee's Sale Time: 9:30 a.m.

18 The Debtors hereby move this court, pursuant to 11 U.S.C. §§ 105(a) and 363, and Fed.
19 R. Bankr. P. 6004, for entry of an order postponing the trustee's sale, and approving the private
20 sale, of the real property located at 3806 Rancho Niguel Parkway, Las Vegas, Clark County,
21 Nevada 89147 (the "Subject Property"). In support of this Motion, the Debtors respectfully
22 represent as follows:

23 1. This Court has exclusive jurisdiction over this Motion under 28 U.S.C. §§ 157
24 and 1334. This Motion raises a core proceeding within the meaning of 28 U.S.C. §§1408 and
25 1409.
26

1 2. On October 7, 2016, the Debtors filed their voluntary petition for relief under
2 Chapter 11 of the Bankruptcy Code.

3 3. No trustee or examiner has been appointed in the Debtors' Chapter 11 case and no
4 committees have been appointed or designated.

5 4. Pursuant to 11 U.S.C. §§ 1107 and 1108, the Debtors continue to operate their
6 business and manage their real property as debtors-in-possession.

7 5. One of the two (2) residential rental properties the Debtors own and manage is the
8 Subject Property. The Subject Property is a fully furnished, single family residence. Since 2015,
9 the Debtors have been listing the Subject Property on Vacation Rentals by Owner (VRBO),
10 www.vrbo.com, for short-term rentals. The Subject Property generates several thousands of
11 dollars in rental income each month.

12 6. The Subject Property is presently worth approximately \$362,785.00.

13 7. The Debtors do not believe they owe any delinquent property taxes to the Clark
14 County Treasurer.

15 8. Jack and Patricia Kelly (the "Kellys") are the holders of a promissory note dated
16 July 10, 2013, executed by Debtor Steve Pandi in favor of the Kellys. The balance due on the
17 promissory note is approximately \$281,262.24, plus accruing interest, escrow fees, attorneys'
18 fees and other costs and expenses.¹ The promissory note is secured by a duly recorded first-
19 position deed of trust against the Subject Property. US Loan Servicing services the promissory
20 note for the Kellys. Prior to October 7, 2016, the Kellys initiated foreclosure proceedings.

21 9. On April 20, 2015, the Internal Revenue Service filed an \$832,978.72 federal tax
22 lien in Maricopa County, Arizona against all of Debtors' right, title and interest to property
23 pursuant to 26 U.S.C. §6321. The Debtors are unsure whether the Internal Revenue Service
24
25
26

1 simultaneously filed a similar lien in Clark County, Nevada (the location of the Subject
2 Property).

3 10. The Subject Property is also encumbered by a \$40,000 deed of trust recorded on
4 February 16, 2016 and held by Butler Law Office.²

5 11. The Debtors do not claim any exempt interest in the Subject Property.

6 12. On October 13, 2016, the Debtors filed a Motion for Continuation of the
7 Automatic Stay (Doc 16).

8 13. On October 31, 2016, the Kellys filed a Response in opposition to Debtors'
9 Motion for Continuation of Automatic Stay (Doc 35).

10 14. On November 4, 2016, the Court entered an Order that the stay under 11 U.S.C. §
11 362(a) shall terminate on November 7, 2016 as to the debt owed to the Kellys and as to the
12 Subject Property (Doc 47). That same day, the Debtors asked the Kellys for the date and time of
13 the next scheduled trustee's sale of the Subject Property.

14 15. The Debtors did not want to lose the Subject Property, so they immediately began
15 exploring options which would allow them to keep it. The Debtors decided to sell the Subject
16 Property to George and Efrosini Pandi³ at current market value. Mr. and Mrs. Pandi would
17 partially finance the purchase of the Subject Property, the Debtors would continue to manage and
18 maintain the Subject Property, and the Debtors would make the monthly mortgage payment on
19 the Subject Property from rental income.

20 16. On November 8, 2016, the Kellys informed the Debtors that the "continued sale
21 date is November 30, 2016 at 9:30 AM." That same day, the Debtors found a lender in Nevada,
22

23 ¹ See Kellys' Response in Opposition to Debtors' Motion for Continuation of Automatic Stay and Request for Order
24 Confirming That the Automatic Stay Does Not Apply or Is Lifted (Doc 35), page 2.

25 ² Clark County Recorder no. 160330000940.
26

1 South Wind Financial, which would partially finance Mr. and Mrs. Pandi's purchase of the
2 Subject Property.

3 17. On November 10, 2016, the Debtors offered to settle the Kellys' promissory note
4 and deed of trust for \$275,000.

5 18. On November 12, 2016, Debtor Steve Pandi asked US Loan Servicing via e-mail
6 for the amount necessary to pay off the Kellys' promissory note so that he "can arrange
7 payment."

8 19. On November 14, 2016, US Loan Servicing confirmed receipt of the Debtors'
9 request and stated that the payoff amount would be sent to the Debtors in three (3) days or less.
10 That same day, counsel for the Kellys communicated to Debtors' counsel that the Debtors had
11 contacted US Loan Servicing seeking a payoff and indicating an intent to pay off the mortgage
12 on the Subject Property, perhaps as early as November 15, 2016, but that he had "instructed [the
13 Kellys] to instruct [US Loan Servicing] to not accept funds."

14 20. On November 16, 2016, US Loan Servicing informed the Debtors that they had
15 "been notified by Jack Kelly's attorney to hold off on providing payoff figures. Once we receive
16 the OK from the attorney we will send to you."

17 21. On November 21, 2016, the Debtors' counsel informed the Kellys' counsel that
18 the Debtors are planning to sell the Subject Property and they "need the payoff for the Motion to
19 Sell Property Free and Clear of Liens."

20 22. On November 22, 2016, the Kellys' counsel informed the Debtors' counsel that
21 the Kellys "requested payoff information from US Loan Servicing" which "will address the
22 request first thing Monday [11/28/2016] morning."

23
24
25 ³ Debtor Steve Pandi's parents.
26

23. The Debtors wish to sell the Subject Property for current market value, with the proceeds to be applied first to payment of any delinquent property taxes; second to the Kellys; third to payment of any duly recorded federal tax lien; and the remaining amount, if any, to Butler Law Office.

24. Such a sale, which would realize the full value of the Subject Property, would not prejudice the rights of any party, and would allow those lienholders with liens not avoidable to realize their security.

25. Lienholders with liens not avoidable will realize more from their security through a private sale of the Subject Property than from the Kellys' trustee's sale of the Subject Property.

26. The Kellys have thus far been unwilling to postpone the trustee's sale scheduled for Wednesday, November 30, 2016. The earliest the Kellys will provide the Debtors with a payoff is Monday, November 28, 2016. The Kellys' unjustifiable delay in obtaining a payoff from US Loan Servicing now leave the Debtors insufficient time to close escrow before the currently scheduled trustee's sale date.

WHEREFORE, the Debtors pray that this Court enter an Order postponing the Kellys' trustee's sale thirty (30) days and permitting the sale of the Subject Property free and clear of liens, the proceeds being applied as described above and granting such additional or alternative relief as may be just and proper.

DATED: November 23, 2016.

By: /S/ AME018326
Andrew M. Ellis
Attorney for Debtors